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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Dasseux *et al.*	Confirmation No.:	5585
Serial No.:	10/099,836	Art Unit:	1639
Filed:	March 15, 2002	Examiner:	Bennett M. Celsa
For:	APOLIPOPROTEIN A-I AGONISTS AND THEIR USE TO TREAT DYSLIPIDEMIC DISORDERS	Attorney Docket No.:	9196-022-999 (CAM 305734-999021)

Fees processed

AMENDMENT AND RESPONSE UNDER 37 C.F.R. § 1.111

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The enclosed Amendment and Response under 37 C.F.R. § 1.111 is in reply to the Office Action dated October 28, 2004, for the above-identified patent application.

Amendments to the Specification begin on page 2.

Amendments to the Claims shown in the listing of claims begin on page 3.

Remarks begin on page 9.

Also enclosed are:

a **Petition for Extension of Time** from January 28, 2005 to and including April 28, 2005, for responding to the Office Action;

a **Terminal Disclaimer**; and

a **Petition to Accept an Unintentionally Delayed Claim for Priority**.

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D-amino acids. *See, e.g., General Foods Corp.*, 23 U.S.P.Q.2d at 1845 (stating that the trial court was in error for looking at whatever a claim *discloses*, but not at what invention it *defines*). Indeed, Garber *et al.* merely studies the physical properties of certain specific rat apolipoproteins and says nothing about the peptides disclosed herein. Moreover, the reference says nothing about the activity of the "D" versus "L" rat peptides that were studied by Garber *et al.* Instead, they merely comment on one pharmacokinetic property. This falls well short of providing the legally required reasonable expectation of success needed for an obviousness based rejection. *See In re Dow*, 5 U.S.P.Q.2d 1529, 1531-1532 (Fed. Cir. 1988). Therefore, claims drawn to a nucleic acid do not render claims drawn to "D" apolipoprotein A-I peptides obvious. Applicants respectfully submit that Claims 1, 3-9, 12-16, 18, 29, 34, 35, 37 and 42 are patentably distinct over Claims 1-23 of the '327 patent in view of Garber *et al.*, and request that the rejection of the instant claims under the judicially created doctrine of obviousness-type double patenting be withdrawn.

I. **U.S. Application No. 10/099,574 in view of Garber *et al.***

Claims 1, 3-9, 12-16, 18, 29, 34, 35, 37 and 42 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-55 of co-pending application 10/099,574 in view of Garber *et al.* Applicants respectfully request that the rejection be held in abeyance until either of the applications is allowed. *See* MPEP 804(I)(B).

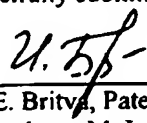
CONCLUSION

In light of the above amendments and remarks, Applicants respectfully request that the Patent Office reconsider this application with a view towards allowance.

The Commissioner is hereby authorized to charge any required fee(s) to Jones Day Deposit Account No. 50-3013 (referencing Attorney Docket No. 9196-022-999).

Respectfully submitted,

Date: April 28, 2005



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Irina E. Britva, Patent Agent (Reg. No.)
For: Anthony M. Insogna 35,203

JONES DAY
222 East 41st Street
New York, New York 10017
(858) 314-1130